



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Van Saarloos et al.
Serial No. : 09/762,824 Examiner : To Be Assigned
Filed : February 14, 2001 Group Art Unit: To Be Assigned
For : SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD
AND APPARATUS

PETITION UNDER 37 C.F.R. 1.137(b)
FOR REVIVAL OF UNINTENTIONALLY
ABANDONED APPLICATION

I hereby certify that this paper is being deposited with the
United States Postal Service as first class mail in an envelope addressed
to: Assistant Commissioner for Patents, Washington, D.C. 20231
December 19, 2001
Date of Deposit

Richard G. Berkley
Attorney Name

25,465
PTO Registration No.

Richard G. Berkley
Signature

December 19, 2001
Date of Signature

Assistant Commissioner for Patents
Washington, D.C. 20231

ATTENTION: OFFICE OF PETITIONS -- BOX DAC

Sir:

The above-identified application became abandoned for failure to timely file a
duly executed Declaration in response to the Notification of Missing Requirements Under 35

12/31/2001 CEBUVIJE 00000063 09762824

03 FC:141

1280.00 0P

U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) dated March 14, 2001 ("Notification of Missing Requirements").

The Notification of Missing Requirements was received by the undersigned United States attorneys on March 26, 2001. A copy of such Notification, as received, is appended hereto as Exhibit 1.

The assignee of the application is Q-Vis Limited, located at 6 Gould Street, Herdsman, Western Australia 6017. A copy of the Notification of Missing Requirements was sent by the undersigned United States attorneys to the assignee's Australian counsel via airmail on March 28, 2001. A copy of the facsimile message which accompanied the Notification of Missing Requirements is appended hereto as Exhibit 2. That message also notified Australian counsel of the deadline for filing the Declaration.

As set out in the Statement of Facts in Support of Filing on Behalf of Nonsigning Inventors filed concurrently herewith, despite repeated attempts by the assignee to obtain the inventors' signatures to the Declaration, and despite their obligation to do so, the inventors have refused to sign.

As a consequence of the refusal of the inventors to sign the Declaration the application unintentionally became abandoned as of September 15, 2001.

In view of the foregoing, petitioner respectfully requests that the application be revived pursuant to 37 C.F.R. 1.137(b).

A Declaration executed on behalf of the assignee, Q-Vis Limited and a Petition under 37 C.F.R. § 1.47(b) and supporting documents have been filed concurrently herewith.

The petition fee prescribed by 37 C.F.R. 1.17(m) is enclosed herewith.

The entire delay in filing the required Declaration in response to the Notification of Missing Requirements was unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,



Richard G. Berkley
PTO Reg. No. 25,465
BAKER BOTTS LLP
Attorney for Applicants
(212) 408-2554

Encl.



Rec'd PTO 26 DEC 2001
FILE NO. A30418-PCT/USA-062635.0133

PATENT

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PETITION UNDER 37 C.F.R. 1.47(b)

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Attorney Name

25,465

PTO Registration No.

Richard G. Berkley
Signature

December 19, 2001

Date of Signature

Assistant Commissioner for Patents
Washington, D.C. 20231

ATTENTION: OFFICE OF PETITIONS – BOX DAC

Sir:

Q-Vis Limited, owner of the entire right, title and interest in and to the above-
identified application, hereby petitions under 37 C.F.R. §1.47(b) to make the application for

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130.00 DP

patent on behalf of and as agent for the inventors Paul Phillip Van Saarloos and John Dishler, who have refused to execute the application.

Submitted herewith in support of this petition are the following:

- (1) Combined Declaration and Power of Attorney executed by Simon Charles Martin, Company Secretary and Chief Financial Officer of Q-Vis Limited;
- (2) Statement Establishing Proprietary Interest by Person Signing on Behalf of Nonsigning Inventor, with Exhibits 1-4, executed by Simon Charles Martin; and
- (3) Statement of Facts in Support of Filing on Behalf of Nonsigning Inventors (37 C.F.R. §1.47(b)), with Exhibits 1-10, executed by Simon Charles Martin.

As set out in the Declaration and the Statement of Facts, the above-identified United States application is a national stage application based upon International application No. PCT/AU99/00665, which was filed in the United States on February 14, 1999, and which claims priority of Australian application No. PP5284, filed on August 14, 1998. The International application was filed by The Lions Eye Institute of Western Australia Incorporated (hereinafter "The Lions Eye Institute") as applicant and named Paul Phillip van Saarloos and Jon Dishler as the inventors. See, Statement of Facts, Paragraphs 3 and 4.

As shown by the Statement Establishing Proprietary Interest, all right, title and interest in and to the Australian priority application No. PP5284, the International application No. PCT/AU99/00665 and the above-identified United States application reside in Q-Vis

Limited pursuant to the terms of employment agreements extant between the co-inventor Paul Phillip Van Saarloos and The Lions Eye Institute at the time the claimed invention was made and at the times the Australian priority and International applications were filed, further pursuant to an Assignment dated October 20, 1999 of Jon Dishler in favor of The Lions Eye Institute, and further pursuant to an assignment dated October 3, 2000 from The Lions Eye Institute to Q-Vis Limited. See, Statement Establishing Proprietary Interest, Paragraphs 4 and 5, and Exhibit 1 (Paragraphs 10 and 11), Exhibit 2 (Section 15) and Exhibits 3 and 4 thereto.

As established by the facts set out in the Statement of Facts, Q-Vis Limited, through its Chief Financial Officer and Company Secretary, Simon Charles Martin, has diligently and repeatedly sought to obtain the inventors' cooperation in executing the United States application. To date, those efforts have been unsuccessful. See, Statement of Facts, Paragraphs 5-13 and Exhibits 1-10 thereto.

The final unextendable deadline for submission of the Declaration in response to the Notification of Missing Requirements Under 35 U.S.C. §371 in the above-identified United States application was September 14, 2001. As a consequence of the inventors' refusal to sign the Declaration, the application unintentionally became abandoned on September 15, 2001. Concurrently herewith, Q-Vis Limited has filed a Petition Under 37 C.F.R. §1.137(b) for revival of Unintentionally Abandoned Application. The execution and filing of the Declaration by Q-Vis Limited is necessary to preserve the rights of the parties and to prevent irreparable harm which would result from the abandonment of the application.

The last known address of the co-inventor Paul Phillip Van Saarloos is 14 Dunster Street, Karrinyup, Western Australia 6018, and the last known address of the co-inventor Jon Dishler is c/o DTC Eye Surgery Centre, Laser Institute of the Rockies, Suite 1200, 8400 East Prentice Avenue, Engelwood, Colorado 80111.

The petition fee (\$130) set forth in 37 C.F.R. §1.17(h) is enclosed herewith.

The surcharge (\$65) set forth in 37 C.F.R. §1.492(e) for late filing of the Declaration is enclosed herewith.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication to Deposit Account No. 02-4377. A duplicate copy of this sheet is enclosed.

Based on the foregoing and the accompanying Combined Declaration and Power of Attorney, Statement Establishing Proprietary Interest and Statement of Facts, the petitioner respectfully submits that the requirements of 37 C.F.R. § 1.47(b) have been met and respectfully requests entry of the combined Declaration and Power of Attorney submitted herewith.

Respectfully submitted,



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